

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 2.60.203, 2.60.204, and	)	PROPOSED AMENDMENT AND
2.60.303 pertaining to application	)	REPEAL
procedure for a certificate of	)	
authorization for a state-chartered	)	
bank; procedural rules for discovery	)	
and hearing; and capital adequacy of	)	
proposed new banks and the repeal	)	
of ARM 2.60.801 through 2.60.811	)	
pertaining to foreign capital	)	
depositories	)	

TO: All Concerned Persons

1. On January 6, 2010, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on December 30, 2009, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to [wjohnston@mt.gov](mailto:wjohnston@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.60.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED BANK (1) One or more individual incorporators desiring to organize a bank shall file with the Commissioner of Banking and Financial Institutions an application to the State Banking Board for a certificate of authorization for a state-chartered bank. The Division of Banking and Financial Institutions of the Department of Administration adopts and incorporates by reference:

(a) the Interagency Charter and Federal Deposit Insurance Application (Expiration Date: 5/21/2010) as the form that shall be completed when applying for a certificate of authorization; and

(b) the Interagency Biographical and Financial Report (Expiration Date: 3/31/2011) for use by individuals in conjunction with the Interagency Charter and Federal Deposit Insurance Application. The application and biographical and financial report are available at the Division of Banking and Financial Institutions,

P.O. Box 200546, Helena, Montana 59620-0546, or on the division web site located at [www.banking.mt.gov](http://www.banking.mt.gov). ~~Said application shall be signed by each of the incorporators, sworn to before an officer authorized by the laws of this state to administer oaths and contain the following information in addition to any other information as may be required pursuant to part 2 and 3 of chapter 1, Title 32, MCA:~~

~~(a) the names, addresses and principal occupations of the stockholders subscribing to the new bank;~~

~~(b) the proposed managing officer, if known, and directors/incorporators of the new bank, with banking experience and personal history of each in compliance with ARM 2.60.302;~~

~~(c) a summary of the evidence applicant intends to present at the hearing to demonstrate a persuasive showing of reasonable public necessity and demand for a new bank at the proposed location as required by ARM 2.60.301;~~

~~(d) information demonstrating capital adequacy of the proposed new bank as required by ARM 2.60.303;~~

~~(e) estimated operating statement and deposit volume at the end of each of the first three years;~~

~~(f) proposed expenditures for bank premises, fixtures, furniture and equipment;~~

~~(g) financial statements of the incorporators/directors and each of those stockholders controlling 10% or more of the stock in sufficient detail to substantiate their net worth;~~

~~(h) statement from the incorporator as to how they intend to meet the insurance requirement of ARM 2.60.304 (i.e., through membership in the federal reserve system or through application to the FDIC as a non-member.)~~

(2) An application fee of \$3,000 \$10,000 shall be paid to the state of Montana at the time of application and thereafter shall not be refundable in whole or in part.

(3) ~~The proposed articles of incorporation shall be submitted with the application for a certificate of authorization.~~ With the application, the applicant must submit a summary of the evidence the applicant intends to present at the hearing for a new bank charter to demonstrate the applicant meets the standards listed in 32-1-203, MCA, so that the board may determine whether to grant or deny the application.

(4) remains the same.

~~(5) The form for applying for a certificate of authorization (FD-2) may be obtained from the Commissioner of Banking and Financial Institutions, Department of Administration, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546.~~

(5) The board may request additional information from an applicant if, in its discretion, additional information is needed to reach a decision on the application.

AUTH: 32-1-203, MCA

IMP: 32-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: The Division of Banking and Financial Institutions (division) believes it is important for Montana to be consistent with other states in the forms used to apply for a state charter. The Interagency Charter and Federal Deposit Insurance Application and the Interagency Biographical

and Financial Report have been developed by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation as the uniform charter application forms for all financial institutions seeking to become chartered by any regulatory agency. Financial institutions include national banks, state banks, federal savings banks or associations, and state savings associations. The division believes that these forms are an efficient and uniform method to acquire the information necessary to make a decision concerning whether to charter a financial institution and seeks to adopt the application and biographical statement and financial report as the uniform forms to be used to apply for a state bank charter in Montana.

The Interagency Charter and Federal Deposit Insurance Application requires the submission of the items listed in subsections (1)(a), (b), (d), (e), (f), (g), and (h) of the rule. However, the division proposes to add a section that requires the applicant to submit a summary of evidence the applicant intends to present at the hearing to demonstrate the applicant meets the standards listed in 32-1-203, MCA.

In addition, the division proposes to add a section that the board may request additional information if, in the board's discretion, this information is required to make a decision on the application. In the past, it has not been clear whether the board had the authority to request additional information from an applicant if the information submitted was unclear or lacking in some respect. It is preferable to allow the board to request additional information instead of denying the application for lack of evidence.

The address is being changed because the division has moved and is no longer located at 846 Front Street.

The division is seeking a fee increase from \$3,000 to \$10,000 for applications for new bank charters. The division has not increased the fee for new bank charters since October 30, 1987. The division proposes to set the fee at \$10,000 because the division's senior banking and legal staff must spend significant amounts of time reviewing and analyzing new bank applications. The division is self-funded through assessments on banks and credit unions as well as licensing fees for other programs the division administers. The division receives no general fund appropriation. The increase is necessary to make the fee commensurate with the associated costs. The division staff would not be doing such a review and analysis absent the application for a new bank charter, so it is only fair that the applicant pay the cost of the staff time to analyze the application.

Further, the application for a new bank charter requires the division to convene an in-person meeting of the six-member State Banking Board to review the application. The board members are chosen from across Montana, and they are paid mileage, meals, and expenses of lodging for their trips to Helena to attend board meetings. A hearing officer and a court reporter are retained to conduct and transcribe the proceedings, respectively. Oftentimes, a hearing must be continued and rescheduled one or more times if the State Banking Board has questions or requires additional information. This requires the division to pay the expenses of the hearing several times, until a decision can be made on the application.

The division does not have any pending applications for new banks. The fiscal impact of this proposed fee increase is impossible to predict because the division does not know when it may receive the next application for a new bank. At

times, several years have passed in between the submission of new bank applications.

2.60.204 PROCEDURAL RULES FOR DISCOVERY AND HEARING

(1) The ~~s~~State ~~b~~Banking ~~b~~Board and division adopt and incorporate the ~~a~~Attorney ~~g~~General's model rules dated June 30, ~~1992~~ 2009, by reference, as stated in ARM 1.3.101, ARM 1.3.102, ARM 1.3.201, ARM 1.3.202, ARM 1.3.211 through ARM 1.3.224, and ARM 1.3.226 through ARM 1.3.233, ~~with the exceptions set forth in ARM 8.2.104 through 8.2.106.~~ Prehearing discovery procedures shall be allowed in the same manner as specified under the Montana Rules of Civil Procedure relative to district court actions. The time period established in discovery may be shortened at the discretion of the board.

(2) and (3) remain the same.

~~(4)~~(a) A notice of filing for a hearing on the application for a certificate of authorization for a new bank must be mailed to all banks within 100 miles of the proposed location, measured in a straight line. The notice of hearing on applications approved by the division in which the board determines there is a substantial basis for the protest must also be mailed to all banks within 100 miles of the proposed location, measured in a straight line. All of the rights and procedures of contested case proceedings apply to a person or bank filing a written protest with the board;

~~(5)~~(b) A written protest must be filed with the division no later than 15 calendar days following the notice of the filing of an application for a certificate of authorization for a new bank. A written protest on all other applications must be filed no later than 15 calendar days upon the filing of the application with the division; and

(6) remains the same, but is renumbered (c).

(a) through (d) remain the same, but are renumbered (i) through (iv).

AUTH: 32-1-203, MCA

IMP: 32-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to delete the reference to ARM 8.2.104 through 8.2.106 because they have been repealed.

2.60.303 CAPITAL ADEQUACY OF PROPOSED NEW BANKS

(1) The applicant must provide a reasonable assurance that the proposed new bank will have adequate initial paid-in capital sufficient to accomplish the following:

~~(1)~~ (a) ~~E~~establish an undivided profits account in an amount great enough to absorb initial operating losses under foreseeable business conditions;

~~(2)~~ (b) ~~T~~total capital and surplus accounts of adequate size to permit the proposed investment in building, land, furniture, and fixtures within the limitation of ~~50~~100% of capital and surplus as imposed by 32-1-423, MCA;

~~(3)~~ (c) ~~P~~rovide protection for depositors' funds to the same extent that the average of all insured commercial banks in the proposed bank's peer group provides capital protection, measured by the most current peer group data available on total capital accounts and reserves as a percentage of total assets. The proposed bank's

reasonably estimated total assets at the end of its first three years of operation shall be the basis upon which this standard shall be projected.; and

(4) (d) To enable the bank to furnish competitive services that will ensure an amount of business sufficient to assure its success.

AUTH: 32-1-203, MCA

IMP: 32-1-203, 32-1-423, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-1-423, MCA, allows for a limit of its paid-up capital and surplus of 100%, rather than 50%. The rule implements 32-1-423, MCA, in addition to 32-1-203, MCA.

4. The department proposes to repeal the following rules:

2.60.801 AUTHORITY, PURPOSE AND SCOPE: DEFINITIONS, found on ARM page 2-6225.

AUTH: 32-8-107, MCA

IMP: 32-8-107, 32-8-201, 32-8-202, 32-8-203, 32-8-205, MCA

2.60.802 APPLICATION PROCEDURE FOR A CHARTER, found on ARM page 2-6226.

AUTH: 32-8-107, MCA

IMP: 32-8-107, 32-8-201, 32-8-205, MCA

2.60.803 EVIDENCE OF GOOD CHARACTER AND PROSPECTIVE COMPLIANCE WITH FEDERAL LAW, found on ARM page 2-6228.

AUTH: 32-8-107, MCA;

IMP: 32-8-107, 32-8-201, 32-8-202, 32-8-301, MCA.

2.60.804 BUSINESS PLAN AND PRO FORMA STATEMENT, found on ARM page 2-6229.

AUTH: 32-8-107, MCA

IMP: 32-8-201, MCA

2.60.805 CAPITAL ADEQUACY, found on ARM page 2-6233.

AUTH: 32-8-107, MCA

IMP: 32-8-201, 32-8-202, MCA

2.60.806 APPLICANTS THAT ARE SUBSIDIARIES OF FOREIGN BANKS, found on ARM page 2-6234.

AUTH: 32-8-107, MCA

IMP: 32-8-201, MCA

2.60.807 NOTICE OF HEARINGS, found on ARM page 2-6235.

AUTH: 32-8-107, MCA

IMP: 32-8-201, 32-8-202, MCA

2.60.808 GROUNDS FOR DENIAL, found on ARM page 2-6236.

AUTH: 32-8-107, MCA

IMP: 32-8-202, MCA

2.60.809 PROCEDURAL RULES FOR DETERMINATIONS: APPROVAL CONDITIONS, found on ARM page 2-6236.

AUTH: 32-8-107, MCA

IMP: 32-8-201, 32-8-205, MCA

2.60.810 ANNUAL FEES, found on ARM page 2-6237.

AUTH: 32-8-107, MCA

IMP: 32-8-205, MCA

2.60.811 PROCEDURAL RULES FOR DISCOVERY AND HEARINGS, found on ARM page 2-6237.

AUTH: 32-8-107, 32-8-205, 32-8-301, MCA

IMP: 32-8-201, 32-8-202, 32-8-203, 32-8-205, 32-8-301, MCA

STATEMENT OF REASONABLE NECESSITY: The statutes relating to foreign capital depositories in Title 32, chapter 8, parts 1 through 6, MCA, were repealed by the 2005 Legislature. Therefore, the department is proposing to repeal the rules located in ARM Title 2, chapter 60, subchapter 8, which implemented the repealed statutes.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov. The data, views, or arguments must be received no later than 5:00 p.m., January 8, 2010.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The

department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [wjohnston@mt.gov](mailto:wjohnston@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State November 16, 2009.